



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2017–0089; FXES11130900000C6-178-FF09E42000]

Endangered and Threatened Wildlife and Plants; Possible Effects of Court Decision on Grizzly Bear Recovery in the Conterminous United States;

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Regulatory review; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are seeking public comment on a recent D.C. Circuit Court of Appeals ruling, *Humane Society of the United States, et al. v. Zinke et al.*, 865 F.3d 585 (D.C. Cir. 2017), that may impact our June 30, 2017, final rule delisting the Greater Yellowstone Ecosystem (GYE) grizzly bear Distinct Population Segment (DPS). In *Humane Society of the United States, et al. v. Zinke et al.*, the court opined that the Service had not evaluated the status of the remainder of the listed entity of wolves in light of the Western Great Lakes (WGL) wolf DPS delisting action and what the effect of lost historical range may have on the status of the WGL wolf DPS. We also describe in this notice our strategy to recover grizzly bears (*Ursus arctos horribilis*) in the lower 48 States of the United States and provide a brief recovery update for each ecosystem.

DATES: We will accept comments received or postmarked by the end of the day on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

ADDRESSES: *Comment submission:* You may submit comments by one of the following methods:

- U.S. mail or hand-delivery: Public Comments Processing, ATTN: FWS–R6–ES–2017–0089, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, Virginia 22041–3803.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–R6–ES–2017–0089.

FOR FURTHER INFORMATION CONTACT: Hilary Cooley, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, University Hall, Room 309, Missoula, MT 59812; by telephone (406) 243–4903. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

In 1975, the Service listed the grizzly bear (*Ursus arctos horribilis*) under the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) as threatened in the lower 48 United States (40 FR 31734, July 28, 1975). On June 30, 2017, the Service published a final rule (82 FR 30502, June 30, 2017; RIN 1018–BA41) designating the GYE population of grizzly bears as a DPS, finding that the DPS was recovered, and removing that DPS from the Federal List of Endangered and Threatened Wildlife. The final rule became effective on July 31, 2017, and remains in effect. Grizzly bears in the remaining area of the lower 48 States remain listed as threatened under the ESA as amended. The status of any grizzly bear population may be changed only through formal rulemaking.

On August 1, 2017, the Court of Appeals for the District of Columbia Circuit issued a ruling, *Humane Society of the United States, et al. v. Zinke et al.*, 865 F.3d 585 (D.C. Cir. 2017), that affirmed the prior judgement of the district court vacating the 2011 delisting rule for wolves in the Western Great Lakes (WGL) (76 FR 81666, December 28, 2011). The 2011 rule designated the gray wolf population in Minnesota, Wisconsin, and Michigan, as well as portions of six surrounding States, as the WGL DPS, determined that the WGL DPS was recovered, and delisted the WGL as a DPS.

This court opinion may impact the GYE final rule, which also designated a portion of an already-listed entity as a DPS and then revised the listed entity by removing the DPS due to recovery. Therefore, we are reviewing the potential implications for the GYE final rule in light of the *Humane Society* ruling. We are seeking public comment on this subject (see **Request for Public Comments**). Below we summarize our recovery strategy to assist the public in providing public comment on the impacts that *Humane Society* might have on grizzly bear.

Recovery Strategy

The grizzly bear was originally distributed in various habitats throughout Western North America from Central Mexico to the Arctic Ocean. Current distribution in the lower 48 States consists of five small populations with an estimated total population of 1,800 bears. The 1993 Grizzly Bear Recovery Plan (USFWS 1993, p. 15) identified seven grizzly bear ecosystems, including five with either self-perpetuating or existing populations and two additional areas, the Bitterroot Mountains in Idaho and the San Juan Mountains in Colorado, where grizzly bears are known to have existed in the recent past. While no resident population currently exists in the Bitterroot Ecosystem, that ecosystem

contains adequate habitat to sustain a population. The Recovery Plan suggests that further evaluation is needed on the status of the San Juan Mountains, where no grizzly bears exist today (USFWS 1993, p.16).

The Service's overarching vision for recovery of grizzly bears in the lower 48 States, to recover and delist populations individually in each of the ecosystems as recovery is achieved, was outlined in the Recovery Plan (USFWS 1993, pp. 16, 33) and further discussed in our 2011 5-year status review (USFWS 2011, pp. 12–14). The review also found that the lower-48-State listing is consistent with our 1996 DPS Policy and recommended that the current entity, on the whole, should retain its threatened status (USFWS 2011, p. 104). We recognized that sufficient evidence exists to support multiple DPSs within the lower-48-State listing, but indicated that further subdivision of the lower-48-State listing was unnecessary at the time (USFWS 2011, p. 14). Prior to the 5-year status review, the Service had attempted to delist the GYE grizzly bear population as a DPS (72 FR 14866, March 29, 2007). That determination was subsequently vacated by the Federal District Court for the District of Montana (*Greater Yellowstone Coalition v. Servheen et al.*, 672 F.Supp. 2d 1105 (D. Mont. 2009)), and the vacatur was upheld by the Ninth Circuit in *Greater Yellowstone Coalition v. Servheen, et al.*, 665 F.3d 1015 (9th Cir. 2011).

The 2011 5-year status review also committed to an evaluation of potential DPSs within the lower-48-State listing to determine whether they are near the point where rulemaking is warranted or appropriate (e.g., when recovery is achieved and delisting may be warranted; or when listing funds become available to address those populations for which we determined that reclassifying to endangered status was warranted but

precluded) (USFWS 2011, p. 14). The GYE was the first ecosystem to achieve recovery and was the first population to be delisted.

Recovery Status

There are approximately 1,800 grizzly bears in the lower 48 States. The population and legal status under the ESA of each ecosystem is as follows:

(1) The GYE: Had approximately 695 bears in 2016 (Van Manen and Harodson 2017, p. 3)—delisted due to recovery July 31, 2017 (82 FR 30502, June 30, 2017);

(2) The Northern Continental Divide Ecosystem: Had approximately 960 bears in 2014 (Costello *et al.* 2017, p. 2)—still listed as threatened (likely biologically recovered, although no decision has been made);

(3) The Selkirk Ecosystem: Had approximately 70–80 bears in 2016 (Kasworm *et al.* 2017)—still listed as threatened;

(4) The Cabinet Yaak Ecosystem: Had approximately 56 bears in 2016 (Kasworm *et al.* 2017)—warranted-but-precluded for uplisting to endangered (August 22, 2017, court order);

(5) The North Cascades Ecosystem (NCE): Contains no confirmed grizzly bears in the United States (U.S. DOI 2016) and an estimated 6 individuals in the adjacent British Columbia portion of the NCE (MFLNRO 2012)—warranted-but-precluded for endangered status (81 FR 87264, December 2, 2016);

(6) The Bitterroot Ecosystem: Currently unoccupied (IGBC 2015)—Nonessential Experimental Population Area (65 FR 69624, November 17, 2000).

Next Steps and Timing

The Service is evaluating the Court’s ruling in *Humane Society of the United*

States, et al. v. Zinke et al., in the context of our final determination regarding the GYE grizzly bear final rule (82 FR 30502, June 30, 2017) to consider what impact, if any, the D.C. Circuit Court of Appeal ruling has on the GYE grizzly bear final rule and what further evaluation should be considered regarding the issues raised in *Humane Society*. We will address public comments and notify the public of our conclusions by March 31, 2018. The GYE final delisting rule will remain in effect during this review process, and the status of grizzly bears throughout the rest of the range will remain unchanged.

Request for Public Comments

We invite written comments on the manner in which the *Humane Society* decision may affect the GYE grizzly bear final rule (82 FR 30502, June 30, 2017). Specifically, we are interested in public input on whether the *Humane Society* opinion affects the GYE grizzly bear final rule and what, if any, further evaluation the Service should consider regarding the remaining grizzly bear populations and lost historical range in light of the Service's decision regarding the GYE grizzly bear.

We request comments from any interested party that pertain to the issues raised in the preceding paragraph only. We will consider all comments received by the date specified in **DATES**. You must submit your comments and supporting materials by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax, or written comments sent to an address other than the one listed in **ADDRESSES**.

Public Availability of Comments

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the web site. If you submit a hardcopy comment that includes personal identifying information, you may

request that we withhold this information from public review, but we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>. Comments and materials we receive will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

References Cited

A complete list of all reference cited herein is available at <https://www.regulations.gov> in Docket No. FWS–R6–ES–2017–0089, or upon request from the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority: This document is published under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 1, 2017

Stephen Guertin

Deputy Director, U.S. Fish and Wildlife Service, Exercising Authority of

Director, U.S. Fish and Wildlife Service

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